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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

INCREDIBLE AUTO SALES, LLC,	)	Bankruptcy No. 06-60855-RBK
	)	
Debtor.	)	<b><u>HMFC'S OBJECTION TO DEBTOR'S</u></b>
	)	<b><u>APPLICATION TO EMPLOY</u></b>
	)	<b><u>PROFESSIONAL (dkt. 110)</u></b>
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**Notice of Hearing:**

**Date:** December 19, 2006

**Time:** 9:00 a.m.

**Location:** Billings, Montana

Hyundai Motor Finance Company ("HMFC") hereby objects to Debtor's "Application to Employ Southwest Brokerage Company (Broker) of Arlington, Texas, Pursuant to 11 USC 327(a)" (dkt. 110) on the basis that the agreement attached as Exhibit 1 to Debtor's Application is so unreasonably ambiguous and confusing that HMFC cannot reasonably determine the terms of the agreement.

1. The brokerage agreement is unclear as to the listing price of the dealership. Debtor's Application states that Debtor "has listed and value of the Kia Franchise located at Billings, Montana at \$800,000." (dkt. 110, p.2) This is inconsistent with Debtor's attached brokerage agreement, which shows a significantly lower listing price. "I agree to sell my dealership at a price of (i) \$25,000 for the Blue Sky / Good Will plus book value for the remainder of the assets...." (Debtor's Ex. 1 (emphasis added).) Debtor has already testified that it presently has an offer of \$400,000 (with equipment, parts, and signage included). The \$25,000 amount in Debtor's agreement appears to be an error. At a minimum, any Order approving employment of Debtor's proposed broker should clarify that the minimum selling price is not really the \$25,000 stated in the agreement.

2. The brokerage agreement is unclear as to the broker's commission. Debtor's Application states that "the Broker shall receive \$25,000 commission on those assets actually sold...." (dkt. 110, p. 2) Again, this is inconsistent with Debtor's attached brokerage agreement. Debtor's attached agreement provides that the Broker will receive "\$100,000 for the Finder's Fee." (Debtor's Ex. 1 (emphasis added)) The agreement also provides that 10% of this fee would be paid up front, and presumably was paid last March 21, 2006, when the agreement was signed. For these reasons, the amount of the proposed broker's fee is unclear, as is the amount of that fee that has already been paid. At a minimum, any Order approving employment of Debtor's proposed broker should clarify that the broker's fee will be \$25,000, which must be reduced by the amount, if any, that Debtor has already advanced the broker pre-petition.

3. HMFC does not object to the employment of a broker to sell Debtor's business. HMFC and other creditors are entitled, however, to know exactly what the terms of such engagement will be. HMFC requests that this Court enter an Order approving Debtor's engagement of Southwest Brokerage Company, or some other broker, under terms and conditions that are clearly specified, and not based upon the inconsistent and ambiguous terms proposed by Debtor's present application.

Dated this 14th day of December, 2006.

/s/ Shane P. Coleman

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**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on this 14th day of December, 2006, a copy of this motion was served upon counsel of record by the following method:

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